

REMARKS

I. Status of the Application

Claims 1-5, 9-12 and 17 have been examined. Claims 1 and 17 are in independent form. The Examiner has indicated that dependent claims 10-12 contain allowable subject matter. On the other hand, the Examiner has rejected the remaining claims on prior art grounds.

II. Rejection under 35 U.S.C. § 102(b) over U.S. Patent Appl. Publ. 2002/0122746 to Yamamori et al. ("Yamamori")

Claims 1, 9 and 17 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Yamamori.

Applicant submits that claims 1, 9 and 17 are patentable over the cited reference. For example, claim 1 recites *inter alia*, "the mouth guide being supported on the airway case so as to be pivotable in a direction approaching the mouth and a direction departing from the mouth." Yamamori fails to teach or suggest at least this feature. Specifically, the Examiner contends that element 59 of Figures 14 and 15 correspond to the mouth guide of claim 1. However, element 59 in Figures 14 and 15 of Yamamori is not pivotable about element 41c. Yamamori merely teaches that "[a]n air guide for oral respiration 59 is removably attached to one side surface of the airway case 41." See Yamamori at paragraph [0097]. Even assuming *arguendo* that element 59 is able to pivot about element 41c, element 59 would only be pivotable in the lateral direction. Element 59 would not be "pivotable in a direction approaching the mouth and a direction departing from the mouth" because the airway case 41 would prevent element 59 from pivoting in such directions. See Yamamori at Figures 14 and 15.

Accordingly, Applicant submits that claim 1 is patentable over Yamamori. Since claim 9 depends upon claim 1, Applicant submits that claim 9 is patentable at least by virtue of its

dependency. Since claim 17 contains features similar to those discussed above in conjunction with claim 1, Applicant submits that claim 17 is patentable for at least similar reasons.

III. Rejection under 35 U.S.C. § 103(a) over Yamamori in view of U.S. Patent Appl. Publ. 2004/0003816 to Cannon ("Cannon")

Claims 2, 4 and 5 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yamamori in view of Cannon. Since claims 2, 4 and 5 are dependent upon claim 1, and since Cannon fails to compensate for the deficient teachings of Yamamori with respect to claim 1, Applicant submits that such claims are patentable at least by virtue of their dependency.

IV. Rejection under 35 U.S.C. § 103(a) over Yamamori in view of Cannon in further view of U.S. Patent No. 6,739,218 to Yang ("Yang")

Claim 3 has been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yamamori in view of Cannon and further in view of Yang.

Since claim 3 is dependent upon claim 1, and Yang fails to compensate for the deficient teachings of Yamamori and Cannon with respect to claim 1, Applicant submits that claim 3 is patentable over the cited references at least by virtue of its dependency.

V. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.116
Application No.: 10/779,852

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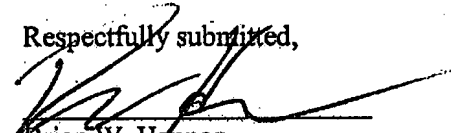
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